Central Law Journal

St. Louis, January 5, 1924

DISPOSITION OF INSURANCE FUNDS WHEN INSURED IS MURDERED BY BENEFICIARY

The rule is that when an insured is murdered by the beneficiary named in his policy of insurance such beneficiary forfeits all right to claim under the policy. However, this does not relieve the insurance company from liability on the policy, but it is required to pay the proceeds to the insured's estate (7 A. L. D. 828 Note). The doctrine of public policy which bars the person named in the policy as beneficiary from recovering will not be carried by the courts any further than is necessary to prevent resort to it for the purpose of effecting a fraudlent purpose. It is not with the intention of relieving the insurance company from liability, and if there is any person without fault who has a right to the benefit of the policy the same will be enforced. In other words, if there is no condition in the policy avoiding it in case of the murder of the insured, the liability of the company is the same where death is the result of murder as where it is produced by any other cause. This follows the very general rule that, where the specific beneficiary named in a policy of life insurance dies, the policy of insurance nevertheless remains in force, and recovery may be had thereon by the personal representatives of the insured upon his death for the benefit of his estate.

In the recent case of Slocum v. Metropolitan Iife Ins. Co. (139 N. E. 816), it appeared that a woman was murdered by her husband who was designated as the beneficiary in her insurance policy. An action was commenced against the insurance company by the administrator of the murdered woman. The Supreme Judicial Court of Massachusetts, following the reasoning of the English cases, held that the beneficiary having debarred himself from recovering on the policy, the insured's personal representative was entitled to the proceeds. In this case the Court in part said:

"In a policy which permits the insured to change the beneficiary the latter has no vester interest in the money to be paid, but only an expectancy. It is clear from the terms of the present policy that Miller had no vested right in the proceeds as against the company; and as against him the insured retained an interest in the policy and a right to determine who should be entitled to the proceeds as beneficiary in the event of her death prior to the maturity of th endowment. As Miller by his conduct has raised a personal bar at law to his recovery, and the company has not availed itself of the authority to pay the proceeds to any other of the persons specified in the contract, the Court rightly refused to make the rulings requested by the defendant and found for the plaintiff, the administrator of the estate of the insured.

"While the question is not now directly before us as to what disposition the administrator must make of the money, amounting to $190.99, it may be added that, if any of it should remain after the payment of the debts of the insured and charges of administration, it cannot go to Miller, who feloniously took her life. The same principle of public policy which precludes him from claiming directly under the insurance contract equally precludes him from claiming under the statute of descent and distribution."

This question is sometimes regulated in fraternal orders by provisions in the by-laws or policies. It has been held that a by-law of the association providing that if the insured should be murdered by the beneficiary the benefit should revert to the society, was valid, and that a recovery by the insured's heirs was precluded where she had been murdered by her husband, the beneficiary (Grand Circle W. W. v. Rausch, 24 Colo. App. 304, 134 Pac. 141).

If the guilty person would take the whole of the deceased's estate under the

laws of descent and distribution, the personal representative of the deceased would not be permitted to recover under the policy, for to do so would be to permit the guilty person to receive the benefit of the insurance by merely paying the same to the insured's estate and paying the beneficiary from the estate. This rule has been paid down in Johnston v. Metropolitan Life Insurance Company (100 S. E. 865, 7 A. L. R. 823), a case decided by the West Virginia Supreme Court of Appeals.

So, in McDonald v. Mutual Life Insurance Company (178 Iowa 863, 160 N. W. 289), an action was brought on a policy by the administrator of the insured, who died from a criminal operation, and it was held that no recovery could be had by the insured's parents, who were her sole heirs, who had aided in procuring the operation.

NOTES OF IMPORTANT DECISIONS

WHEN OFFICER MAY ARREST SUSPECTED NARCOTIC DEALER WITHOUT WARRANT.—In the case of Green v. United States (C. C. A. Eight Cir.), 289 Fed. 236, the evidence discloses that for over a month prior to the arrest of the defendants they had been under surveillance by the narcotic agents, who had information that they had brought narcotics into Kansas City. The officers were also watching a certain drug store that was notorious as a rendezvous for drug peddlers, and during the time mentioned the defendant Lichtor was seen to drive up there in his car and engage in conversation with the proprietor, then under indictment for dealing in narcotics. Their investigation further disclosed that the car the defendant Lichtor was using was licensed in the name of the defendant Green. There is evidence that on the day of the arrest the two defendants drove up to the drug store,, and one of them went in. Later they were observed at a barber shop run by Green, where Lichtor spent part of his time. From there they proceeded in the car licensed in the name of Green, and drove to the drug store. Green alighted, carrying a grip, followed by Lichtor. At this point the officers stepped up, disclosed their identity, and placed them under arrest, and, putting them back in the car, started with them for the police station. Immmediately the defendants began to talk about "fixing the matter up," etc., so as not to be taken to jail, and exhibited and offered $250 to the officers, stating there would be more coming, if necessary. At the same time the officers inquired what was in the bag that was in possession of the defendants in the car, and they replied, "Nothing." The officers requested them to open it. They complied, and a quantity of morphine and cocaine was found therein, which was afterwards used as evidence at the trial.

In holding that the arrest of defendants without a warrant was justified, the court said:

"Probable cause which will justify an arrest is reasonable grounds of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in his belief that the person accused is guilty of the offense of which he is suspected. The evidence discloses that, in the case at bar, the narcotic officers had probable cause to warrant the arrest of the defendants, and, having made a legal arrest, they had the right to search and take from them narcotics, the mere possession of which, under the circumstances existing, constituted a felony.

"Every search and seizure made by an officer without a search warrant is not within the condemnation of the Fourth Amendment. It is the right and duty of the government to secure evidence of crime, even from the accused himself, if this can be done without violating his constitutional rights.' Gouled v. U. S., 255 U. S. 298, at page 301 (41 Sup. Ct. 261, 65 L. Ed. 647).

"The right of the government to search the person of the accused for evidence of a crime, and discover and seize the fruits or evidence of the crime, has always been maintained under English and American law. Weeks v. U. S., 232 U. S. 383, at page 392 (34 Sup. Ct. 341, 58 L. Ed. 652,, L. R. A. 1915B, 834, Ann. Cas. 1915C, 1177). Judge Hook said in Pritchett v. Sullivan (8 C. C. A.) 182 Fed. 480, 104 C. C. A. 624, that public officers, especially charged with the enforcement of the law and preservation of the peace, may lawfully arrest without warrant and without view of the crime where they have reasonable grounds for believing that a felony has been committed.

" 'It is not only the right, but the duty, of an officer making an arrest to take from the prisoner, not only stolen goods, but any article which may be of use as proof in the trial of the offense with which the prisoner is charged.' From dissenting opinion in Newberry v. Carpenter, 107 Mich. 567, 65 N. W. 530, 31 L. R. A. 163, 61 Am. St. Rep. 346.

" 'The rule of the common law, that a peace officer or a private citizen may arrest a felon without a warrant, has been generally held by the courts of the several states to be in force in cases of felony punishable by the civil tribunals. Kurtz v. Moffitt, 115 U. S. 487, at 504, 6 Sup. Ct. 148, at page 154 (29 L. Ed. 458)."

OWNER PERMITTING INTOXICATED PERSON TO OPERATE CAR CAUSING DEATH OF ANOTHER, GUILTY OF MANSLAUGHTER.--In a prosecution for manslaughter for causing the death of a pedestrian resulting from driving an automobile while intoxicated, proof that the machine owned by accused was being operated by an intoxicated person while accused, who had control of the automobile, was sitting therein, was sufficient to charge accused with knowledge of the operator's condition, and accused was therefor guilty under a statute providing that a person who, while intoxicated, causes death in the operation of any vehicle, is guilty of a felony. Ex parte Liotard Nev. 217, Pac. 960.

In this respect the court said:

"While it does not appear that petitioner gave Krites instructions to operate the car, it is an undisputed fact that the petitioner was present while Krites was at the wheel and while the engine was in action. Krites admits that he was at the wheel at the time of the tragedy. He was in control of the car by consent of the petitioner. Petitioner is chargeable with knowledge of Krites' condition. No one would contend that the owner of a car would not be liable for injuries resulting from his operating it while intoxicated. How, then, can he escape the consequence when he sits by and permits another, who is intoxicated to operate it? In civil actions the negligence of a chauffeur is imputed to the owner, when he is riding in the car at the time of the negligent act. Huddy on Automobiles (5th Ed.) § 629.

"The reasoning which leads to this conclusion is equally applicable in the situation here presented. The public welfare, as well as sound logic, justifies the conclusion. The owner of a dangerous instrumentality cannot jeopardize the lives of others by placing it in the hands of one under the influence of liquor with permission to use it, or allow him to use it with his knowledge and approval, wthout becoming both civilly and criminally liable, when a statute such as the one in question controls. One who is so careless of the rights of others as to use a dangerous instrumentality while incapacitated by drink, or who permits others to do so, as here shown, invites the consequences. He must pay the penalty. In the case of Commonwealth v. Sherman, 191 Mass. 439, 78 N. E. 98, which is almost identical to this so far as the facts are concerned, the Supreme Judicial Court of Massachusetts disposes of the case in these brief words:

"'In our opinion those facts warranted the inference that the owner knew and allowed the his machine to be illegally run. The case so made out is a prima facie case only. It may be contradicted or explained. But, uncontradicted and unexplained, it does, in our opinion, warrant that inference, and so makes out a prima facie case.'"

THE INDUSTRIAL LAW OF COLORADO*

BY WILLIAM R. EATON

The strongest support in the structure of our government is the power vested in our courts to hear and determine disputes between all persons, and thus afford protection to our liberties which were so carefully guarded by the constitutional guaranties. Settlement of private quarrels by duel was finally prohibited in the early part of the nineteenth century, and imprisonment for debt or contract liabilities entirely ceased. Judgments in cases arising out of contract or property right gave no redress which interferred with the life or the liberty of the unsuccessful litigant. As the last century was drawing to a close the aplication of the doctrines of assumption of risk and acts of a fellow servant in actions concerning personal injuries to employees, were the subject of much anarchistic comment; just after the beginning of the twentieth century, workmen's compensation laws had eliminated the questions of risk in employment and acts of fellow servants in most of the states.

In considering wages and hours of labor, public brawling was claimed as a right and the weapon of the strike and lockout was invoked every day. Turmoil instead of tranquality was the doctrine being preached and followed by the parties on both sides of industrial questions.

It logically follows that much thought would be given to a means of settling the disputes between employers and employees on the subject of wages, hours of labor and other conditions of employment instead of the strike and lockout, and an attempt made to put some stop to industrial strife, disorder and waste by decisions of impartial men after full opportunity for hearing.

Colorado has been a wide field for industrial disorder in the past. Today the situation is entirely changed. The strikes of the past thirty years have imposed tremendous losses upon both sides to each controversy.

*Address before the Colorado Bar Association, August 4, 1923.

It has made little difference who has prevailed in the dispute when a strike or lockout was commenced and stubbornly fought. Frequently the employer has been better able financially to stand the loss, but it has been said by many that the greatest loss has fallen upon the employees on account of lost wages alone.

When this question has been seriously considered, a means of averting these losses and breaches of the peace by requiring the disputants to submit the causes of their controversy to some disinterested persons is always uppermost. Arbitration along old and established lines has frequently failed to bring satisfactory results.

The disputes involved are much like those found in any law suit. One side charges the other with breach of contract; or, possibly, on account of new conditions, the facts and circumstances underlying the provisions of the existing contract have changed so as to show a partial failure of consideration, and a novation or amendment is desired. In any event, it logically follows that attempts would be made to create tribunals where the questions involved in industrial disputes would be presented, heard and decided by disinterested and impartial persons. In Colorado, Kansas and the Dominion of Canada, such tribunals have been in existence recently. The detail of whether such a tribunal should consist of one or more persons has been resolved in favor of a board of three; possibly this will be changed during the next decade or two, just as the old court system of having two or more judges hear certain preliminary trials has now almost disappeared.

Upon June 11, 1923, nation-wide publicity was given to a decision rendered that day by the United States Supreme Court to the effect that the Kansas Law creating a Court of Industrial Relations was unconstitutional, and here in Colorado, where the first commission in the United States was created to hear and determine questions arising out of industrial disputes, many employers and employees, as well as lawyers, have been considering the effect of that decision upon the powers vested in the Industrial Commission of Colorado.

Consideration of the opinion by Chief Justice Taft in Charles Wolff Packing Company v. The Court of Industrial Relations of the State of Kansas,[1] and of the decision of Justice Denison of the Supreme Court of Colorado in the People v. the United Mine Workers of America,[2] finally decided October 3, 1921, together with a brief of the history of the sources and results of the Colorado statute (Chapter 180, Session Laws of Colorado, 1915, with amendments of 1921 and 1923), and a synopsis of the powers vested in the Industrial Commission of Colorado will give us some light on the subject.

Upon March 22, 1907, there was enacted in the Dominion of Canada an

"Act to aid in the prevention and settlement of strikes and lockouts in mines and industries connected with public utilities," now known as "The Industrial Disputes Investigation Acts" (Chapter 20, 6-7, Edward VII.) This act provides for boards of conciliation to be composed of three persons, one to be appointed on the recommendation of the employer, one on the recommendation of the employees (the parties to the dispute) and the third on the recommendation of the members so chosen. The complainant is required to set forth in writing a statement showing the names of the parties, the nature and cause of the dispute, the claims and demands over which exception is being taken, the number of persons involved, the attempts of the parties themselves to adjust the dispute, and the further statement that it is the belief of the complainant that if there is no adjustment of the dispute, a strike or lockout will result. The board so selected and appointed is required to do all such things as it deems right and proper to obtain a fair and amicable adjustment of the dispute, make findings, reports and recom-

(1) 17 U. S. Supreme Court Advance Opinions, 756, 111 Kansas 501, 207 Pac. 806.

(2) 70 Colorado, 269.

mendations, and express provisions are made for publicity to be given of its report and recommendations.

The foregoing procedure and a number of other features which had been in effect in Canada for eight years were adopted and adapted to he requirements of our Constitution, enacted into law in 1915, and have been in effect ever since August 1st of that year. One of the most important provisions of the Canadian law which was adopted states that the final award of the Industrial Commission of Colorado shall not be binding, conclusive or enforceable, unless the parties thereto have previously agreed in writing that each of them accept and be bound by the award. In this respect, the Kansas Legislature sought to make its enactment compulsory not to industries which were affected with a public interest, but to certain named industries which the legislature declared *were* affected with a public interest. And although a reading of the Kansas law shows that it contains provision for the submissions of industrial questions upon the consent of the parties, it has been in connection with the compulsory features of the Kansas law that the widest publicity has been given, and in which it has now been declared that constitutional rights were violated. It is seldom that the Industrial Commission of Colorado has resorted to the compulsory features of the law, which is written in the following —language:

"Nothing in this act shall prohibit the suspension or discontinuance of any industry, or of the working of any person therein for any cause not constituting a lockout or strike, or to prohibit the suspension or discontinuance of any industry or of the working of any persons therein WHICH INDUSTRY IS NOT AFFECTED WITH A PUBLIC INTEREST."

The first clause was adopted verbatim from the Canadian act; the second clause was added to meet the constitutional restrictions concerning involuntary servitude, due process of law and to preserve the inviolability of contractural rights.

At the date of the enactment of the Colorado law, there had been 177 applications for the Canadian type of board, out of which 158 disputes had been settled without strike or lockout and only 19 strikes had resulted. Truly, such a system was well worth serious study and attempt to adapt its good features for the benefit of the people of this state.

The board system of Canada was incorporated in the Colorado statute, but has not been used. The powers to hear and determine industrial disputes was also placed with the Industrial Commission, and its members early decided to give their personal attention to these disputes and delegate other duties to referees and other officers. This material change in administration recognized the inherent weakness in an arbitration board (which has been characterized as a jury packed on both sides) which has been recognized and commented upon by many who have had experience with boards of arbitration composed of partisans. Colorado has a board composed of men who are entirely disinterested in any particular dispute, and who bring to hearings and decisions the same characteristic of an open mind and listening ear that we expect of our judges in our courts, and thus there have been obtained impartial hearings and eminently fair decisions which have resulted in only two decisions out of over one thousand being questioned in the courts, and each of these two appeals have been upon the one question—Whether the particular dispute before the commission concerned an industry which was "affected with a public interest."

There has been some comment upon the provision that decisions of the Industrial Commission of Colorado are not binding and that either part to a dispute may decide to strike or lockout after the findings and award of the commission have been published. A consideration of our court system and the results obtained, and applying it to the present provisions of the Industrial Commission, causes criticism to fall. While we have the right to an exe-

cution to enforce court judgment, unless the person against whom the execution runs has property or the specific subject matter of the judgment, the execution avails nothing. In looking over a judgment docket recently in one of our courts, a large number of judgments appeared to be unsatisfied, and you will all be interested to know that over 75% of the judgments there recorded during a long period of years still remain unsatisfied. Is it too much to say that the percentage of unsatisfied judgments in courts of record are no greater than the proportion would be if each judgment debtor voluntarily settled the award against him immediately and without process from the court.

The record of the Industrial Commission of Colorado, when compared with the records from Canada, show almost the same percentage of complaints finally settled without strike or lockout. In Colorado, up to the 1st day of August, 1923, there were 1090 disputes decided by the commission, and in only 73 cases did a strike result. In Canada, up to the 31st day of March, 1922, there had been 509 cases considered, and strikes were averted in all but 33 cases. The percentage in Colorado is 93.3% successful settlement and only 6.7% strikes, and in Canada, 94% settlements and 6% strikes.

The results of the work under the Colorado statute have not been accompanied with the publicity which has been given to the work of the Kansas Industrnal Court, which, by the way, is not a court:

"The Court of Industrial Relations is, in fact, a public service commission; the word "court" having been merely employed as a matter of legislative strategy," says Justice Burch in the Howat case,[3] whose disenting opinion in the Wolff case[4] was upheld by Chief Justice Taft in the United States Supreme Court.[5]

(3) State ex rel. Attorney General v. Alexander Howat et al., 107 Kansas 423, 198 Pac. 686, at page 694.

(4) Charles Wolff Packing Company v. The Court of Industrial Relations of the State of Kansas, 111 Kansas 501, 207 Pac. 806.

(5) Citation, ante.

The criticism of Chief Justice Taft in the Wolff case is that the Kansas act (Kansas Court of Industrial Relations Act, Chapter 29, Special Session Laws of 1920) curtails the rights of the employer on the one hand, and of the employee on the other, to contract about his affairs. This is part of the liberty of the individual protected by the guaranty of due process in the Fourteenth Amendment to the Constitution of the United States. He says:

"While there is no such thing as absolute freedom of contract, and it is subject to a variety of restraints, they must not be arbitrary or unreasonable. Freedom is the general rule, and restraint the exception."

The fault found with the Kansas statute is, that the legislature there arbitrarily classified certain kinds of business as being "clothed with public interest," and in the case submitted, the proof showed that the particular employer was not conducting a business which met the test. The decision is not a destruction of the Kansas Court, but an indication as to the scope within which that "court" may function. The Howat case was tried on an entirely different theory. The question of wages and conditions of labor was only considered in illustrating the activities of Howat and his associates. Howat was enjoined from continuing his activities during an emergency which existed, and the decision of the court was that the emergency existed, the injunction was proper, and for Howat's failure to obey the order of the court, its judgment of contempt would be sustained, and he was required to serve the sentence for the contempt. An interesting sidelight is found in the testimony, where Howat expresses his disregard—yes, and contempt—for the courts, and says, in substance, that he did not know that a claim for wages in dispute could be determined in a court; he had never settled a case that way; he never tried it; and anyway, there was a contract which provided for the wages, and he was not obliged to go to court, either in Kansas, or in the other districts; he had never read the injunction; he did not recognize the

courts in the matter of settlement of wages and did not recognize that contracts were made to be enforced in the courts.

The declaration of the Kansas Court that certain industries were affected with a public interest did not make them so. Whether they are or not depends on their relation to the public interest. The regulation of rates to be charged for the storage and handling of grain, for fire insurance premiums, the Oklahoma Bank Guaranty law, and the Adamson law are examples of laws which have been determined by the United States Supreme Court to affect industries which are clothed with a public interest.[6]

The reasons set forth in each decision must be considered to determine how far a legislature may go. And in Colorado, without defining which industries shall be included within the compulsory powers of the Industrial Commission, it is simply provided that:

"Nothing in this act shall prohibit the suspension or discontinuance of any industry or of the working of any persons therein, which industry is not affected with a public interest."

The constitutionality of the Colorado statute was first raised in 1920, appealed to the Supreme Court and decided April 4, 1921. The case was finally disposed of by denial of rehearing upon October 3, 1921. Before the final decision in the Supreme Court another case was presented to the Denver District Court in which Judge Morley upheld the constitutionality of the statute. During the spring of 1921 an amendment was passed by the Twenty-third General Assembly which eliminated that restriction of the compulsory features of the law to only those industries which were affected with a public interest. On the very day that the decision was handed down by the Supreme Court, the Governor attached his signature of approvel to the amended law, but during the 1923 session of the legislature the original paragraph of the 1915 law was re-enacted, so that the law today is exactly as that which was construed in the decision of Justice Denison, who says:

"The words 'affected with a public interest' were no doubt used by the General Assembly to keep the statute within constitutional limits."

and after finding that the production of coal was "at the present time" affected with a public interest, he concludes:

"The statute does not violate any constitutional provision as to due process or liberty of contract; as appears from the cases cited. * * * There is no involuntary servitude under this act. Any individual workman may quit at will for any reason or no reason. There is not even prohibition of strike. The only thing forbidden is a strike before or during the commission's action."

This decision of Justice Denison is not in conflict with any views expressed by Chief Justice Taft. The Colorado law was written with due regard to the constitutional rights of every employer and employee. In Kansas the legislators were not so considerate, and now the decision of the Supreme Court of the United States clears the situation.

It is significant that the tests of constitutionality of these laws were made by the same organizations in Colorado and in Kansas, viz., by the United Mine Workers and the packing house employees. In Colorado, the mine workers obtained a clear-cut decision that our statute was constitutional and applied to all industries which were affected with a public interest; and when the packing house employees made the second test they failed to take the decision which was to the same effect to the Supreme Court. In Kansas the test by the United Mine Workers proved to be an injunction against the acts of Howat and his associates in connection with the strike; and it was not until the packing house employees' test was determined, that the full significance of the Kansas law become apparent.

(6) Munn v. Illinois, 94 U. S. 113; Budd v. New York, 143 U. S. 517; Brass v. North Dakota, 153 U. S. 391; Noble State Bank v. Haskell, 219 U. S. 104; Gorman Alliance Insurance Company v. Lewis, 23 U. S. 389; Block v. Hirsch, 256 U. S. 135; Van Dyck v. Geary, 24 U. S. 39; Wilson v. New, 243 U. S. 332.

MUNICIPAL CORPORATIONS—REGULATING VEHICLES FOR HIRE

CITY OF COLUMBIA v. ALEXANDER

119 S. E. 241

(Supreme Court of South Carolina, Oct. 2, 1923)

An ordinance of the city of Columbia, prohibiting vehicles for hire from operating on Main street within a designated zone, except to convey passengers desiring to be discharged at a point on Main street or pick up a passenger within that zone, pursuant to a previous call and requiring a vehicle for hire in such cases to enter Main street at the corner within the point in question and to leave at the nearest corner, held void, being an unreasonable and discriminating interference with constitutional and contractual rights.

Marion, J., dissenting.

Original proceeding for a writ of habeas corpus on behalf of Robert Alexander, opposed by the City of Columbia. Petitioner discharged.

C. T. Graydon, of Columbia, for petitioner.

Colin S. Monteith, of Columbia, for respondent.

COTHRAN, J. Habeas corpus proceedings in the original jurisdiction of this court for the purpose of testing the validity of an ordinance of the city of Columbia entitled "An ordinance further regulating traffic of the city of Columbia," adopted March 27, 1923, taking effect May 1, 1923, for a violation of which the defendant was convicted and sentenced on May 3, 1923.

On May 3, 1923, the defendant applied to Hon. R. C. Watts, an associate justice of this court, for a writ of habeas corpus, which was granted in an order signed by him on that day, requiring the city jailer of the city of Columbia to produce the body of the defendant before him at Laurens, S. C., on May 5, 1923, at 3 o'clock p. m., in the usual form.

Upon return of the writ, the associate justice signed an order referring the matter to the entire court, to be heard at regular term May 14, 1923, admitting the defendant to bail in the meantime and enjoining the enforcement of the ordinance in question meanwhile. At the appointed time the matter was heard by the court.

The ordinance in full is as follows:

"An ordinance further regulating traffic of the city of Columbia.

"Be it ordained by the mayor and the city council of the city of Columbia:

"That from and after 1st day of May, 1923, it shall be unlawful for any person, firm or corporation operating vehicles for hire in the city of Columbia, to drive or permit the said vehicles to be driven on Main street between the state house and the post office, except for the purpose of discharging a passenger or passengers, or for the purpose of taking up a passenger or passengers, upon a call previously arranged for, and any entering of said Main street for the purpose of discharging of said passenger or passengers, or answering said call, the said vehicle or vehicles shall enter Main street at the corner nearest to the point at which said passenger is to be discharged or taken up, and shall leave said Main street upon reaching the first corner leading away from said Main street after having discharged or taken up said passenger or passengers.

"That no person, or persons, shall be allowed to drive any vehicle in the city of Columbia for hire unless and until said person, or persons, shall have filed with the chief of police an application for permission to drive said vehicle which application shall be recommended by at least two responsible citizens of the city and shall be subject to the approval of the mayor and chief of police; that the chief of police and such officer, or officers as he may designate be, and they are hereby empowered with authority to make stated inspection of vehicles operating for hire in the city of Columbia, with a view of determining their safety and convenience for the transportation of the public, and any vehicle condemned by chief of police shall not be longer operated in the public service.

"That no vehicle shall be operated until the persons, firm or corporation owning the same shall have paid the license, or licenses, provided by the said ordinance for the operation of said vehicle and for the permit to be issued to the driver thereof.

"That any person, firm or corporation violating the terms of this ordinance shall, upon conviction before the Recorder, be fined in the sum not exceeding one hundred dollars, or imprisonment for a period not exceeding thirty days.

"That the chief of police may in his discretion summon any person, firm or corporation violating the terms of this ordinance, as well

as the terms of any other ordinance regulating traffic, or any person, or persons refusing to obey the orders of the police department, before the city council to show cause why his license to operate vehicles in the city of Columbia for hire, shall not be revoked, and the person, or persons so summoned shall be given at least three days' notice to answer before the city council.

"Done and ratified under the corporate seal of the city of Columbia this 27th day of March A. D. 1923. W. A. Coleman, Mayor."

"Attest: G. F. Cooper, City Clerk."

It was admitted by the defendant, upon the trial in the city court, that at the time alleged he was operating for hire an automobile in the city of Columbia, under a license from the city; that when arrested he was driving his car up Main street between the state house and the post office; that he had no passenger in the car to be discharged at a point on Main street, and was not expecting to take up a passenger on Main street upon a call previously arranged for. He came squarely within the inhibition of the ordinance, and if its validity should be sustained, the conviction was proper.

The defendant attacks the validity of the ordinance upon the grounds that it is unreasonable and unconstitutional, in that it deprives him of life, liberty and property without due process of law, and is discriminatory against him and his business.

The earlier decisions of this court announce the principle in very broad terms, that once conceding the power of the municipality to pass the ordinance which may be in question, the court will not inquire into its unreasonableness; as it has been expressed:

"The Judiciary * * * cannot run a race of opinions upon points of right reason and expediency with the law making power."

In City Council v. Ahrens, 4 Strob. 241, the court said:

"This court, of course, has nothing to do with the policy of the ordinance. It may be very unjust, oppressive and partial."

In City Council v. Baptist Church, 4 Strob. 306, the court said:

"In deciding the question of the power of the city council to pass the ordinance, the necessity or expediency of its enactment has not been considered. That has been assumed. If the power exists, the court has no jurisdiction to control the discretion of the city council in its exercise, provided it be exercised consistently with the laws and Constitution of the state."

In Summerville v. Pressley, 33 S. C., 56, 11 S. E. 545, 8 L. R. A. 854, 26 Am. St. Rep. 659, the court said:

"The town council, which alone had the right to judge, deemed the ordinance necessary to preserve the health of the town, and we have no right to review that judgment."

To the same effect, practically, are the cases of Crosby v. Warren, 1 Rich. 387; City Council v. Heissenbrittle, 2 McMul. 236.

The later decisions, however, have greatly modified the sweeping declarations of the earlier decisions, and declare that where the complainant asserts the impairment of constitutional rights, the reasonableness of the ordinance will be inquired into in determining such claim.

In Thomasson v. R. Co., 72 S. C. 1, 51 S. E. 443, the court said:

"A municipal ordinance within the constitutional grant of the legislature cannot be impeached in court for mere unreasonableness. * * * But if attacked on constitutional grounds, the unreasonableness of an ordinance may be considered as a circumstance with a view to ascertain if it really violates some constitutional provision. * * * The ordinance under consideration being questioned for mere unreasonableness in the request to charge, and not because in violation of the constitution, or as void for want of power, a judicial question was not presented and there was no error in refusing to charge that the ordinance was void because unreasonable."

In the case of State v. Earle, 66 S. C. 194, 44 S. E. 781, the proceeding was in prohibition to restrain the city council from enforcing an ordinance requiring railroad companies whose tracks crossed streets to station a flagman there and to maintain certain lights. The objection to the ordinance, among others, was that it contravened the due process clauses of the federal and state constitutions, was unreasonable, unjust, oppressive, and burdensome upon the petitioner. The circuit judge held that under the Darlington Case, 48 S. C. 570, 26 S. E. 906, and the Ahrens Case, that the ordinance was within the police power of the city, and its unreasonableness would not be inquired into. This court reversed his judgment holding:

"The next question that will be considered is whether the circuit judge in refusing the order

of reference, erred in ruling that the petitioner did not have the legal right to show by testimony that the ordinance is 'unreasonable, unjust, oppressive and a burden upon the petitioner.'" The court then proceeded to cite authorities, principally from the Supreme Court of the United States, and concludes:

"These authorities demonstrate that the petitioner had the right to show by testimony that the ordinance was so unreasonable in its operation as really to be spoliation or confiscation of its property under the guise of legal forms, and that the ruling of the circuit judge was erroneous."

In Brunson v. Youmans, 76 S. C. 128, 56 S. E. 651, it is said:

"Hence the rule in state and federal courts that an ordinance may be declared invalid when it is so unreasonable and oppressive in its operations as to warrant an inference that it violates some right guaranteed by the Constitution."

It is significant that the opinion in this case was written by Mr. Justice Jones (afterwards Chief Justice), who carefully reiterated the general principles announced by him in the Darlington Case, but qualified the sweeping character of that case by the holding above quoted.

In Kirk v. Board, 83 S. C. 372, 65 S. E. 387, 23 L. R. A. (N. S.) 1188, the court said:

"It is always implied that the power conferred to interfere with these personal rights is limited by public necessity. From this it follows that boards of health may not deprive any person of his property or his liberty, unless the deprivation is made to appear by due inquiry to be reasonably necessary to the public health. * * * To the end that personal liberty and property may be protected against invasion not essential to the public health—not required by public necessity—the regulations and proceedings of boards of health are subject to judicial review. * * * In passing upon such regulations and proceedings, the courts consider, first, whether interference with personal liberty or property was reasonably necessary to the public health, and, second, if the means used and the extent of the interference were reasonably necessary for the accomplishment of the purpose to be attained. * * * If the statute or the regulations made or the proceedings taken under it are not reasonably appropriate to the end in view, the necessity for curtailment of individual liberty, which is essential to the validity of such statute and regulations and proceedings, is wanting, and the courts must declare them invalid, as violative of constitutional right."

In this last-cited case Mr. Justice Hydrick dissented from certain expressions in the leading opinion and from the judgment, but said:

"If the language above quoted means no more than that the courts may inquire into the reasonableness or necessity of such regulations and into the manner of their administration, and consider these, in so far as such inquiry and consideration may serve to enable the courts to decide whether there is any real and substantial relation between such regulations and the manner of administering them, and the avowed purpose sought to be attained, and hence whether they are bona fide exertions of the police power, or mere pretenses, under cover of which constitutional rights are invaded, then I think the statement correct."

His statement of the law is perfectly clear and sound when he adds:

"If it does, in fact, in its necessary operation and effect, conflict with the Constitution, then the courts may hold it void, as being in excess of the power granted, or in violation of the Constitution."

If the case of Summerville v. Pressley, 33 S. C. 56, 11 S. E. 545, 8 L. R. A. 854, 26 Am. St. Rep. 659, can be considered authority for the proposition that the matter of reasonableness of an ordinance can under no circumstances be inquired into by the court, it is singular that the court should have quoted the following from Commonwealth v. Alger, 7 Cush. (Mass.) 85.

"The power we allude to is rather the police power, the power vested in the Legislature by the Constitution, to make, ordain and establish all manner of wholesome and reasonable laws, statutes and ordinances * * * not repugnant to the Constitution, as they shall judge to be for the good and welfare of the commonwealth and of the subjects of the same."

Or the following from Cooley on Const. Law:

"The judiciary can only arrest the execution of a statute when it conflicts with the Constitution."

In Darlington v. Ward, 48 S. C. 570, 26 S. E. 906, the court said:

"In passing on the validity of an ordinance passed by a town, the court can only inquire as to the constitutionality of the act delegating the power, and whether the town has acted within the scope of the power so delegated;

but the court cannot consider whether an ordinance is reasonable or necessary."

In the case of Darlington v. Ward, 48 S. C. 570, 26 S. E. 906, Mr. Justice Jones, delivering the controlling opinion in the case, says:

"The right, asserted by some courts to declare a municipal ordinance invalid because unreasonable, is limited to ordinances passed under the implied or incidental powers of the municipality. In such cases, I think the true thing [theory?] is, that such ordinances may be declared invalid only when they are so clearly unreasonable, oppressive, or violative of common right, as to justify a court in concluding that the legislature did not intend to grant such power in the charter. In the last analysis, it is a question of legislative intent and not a question of reasonableness."

It is further said in Darlington v. Ward:

"Nor can any ordinance of a municipal corporation, within the power conferred by the legislature, and not in conflict with the laws and constitution of the state, be impeached in a court for unreasonableness."

However broad the statement contained in the Darlington v. Ward Case may be considered, the opinion clearly foreshadows the conclusion subsequently reached by the court: That the unreasonableness of an ordinance may be so great as to violate constitutional privileges. State v. Earle, 66 S. C. 194, 44 S. E. 781; Thomasson v. Railroad Co., 72 S. C. 1, 51 S. E. 443.

It cannot be denied that the enforcement of the ordinance will seriously impair, if not destroy, the defendant's lawful business. Upon its face that appears to have been the purpose of the ordinance.

The defendant is engaged in a lawful business operating an automobile for hire, duly licensed by the city council of Columbia. It is the means of his livelihood and constitutes a property right, common to all members of the public, to the use of Main street, exercised in a legitimate way. The defendant has not only the constitutional right of exercising his energies in the pursuit of a lawful business, but a contractual right under license from the city to operate this particular form of business.

"It may be observed also that with regard to the extent to which the court will inquire into the reasonableness or the necessity of such a law, the courts place laws regulating lawful business enterprises in a class separate and distinct from those enacted to protect the public health." Hydrick, A. J., in Kirk v. Board, 83 S. C. 378, 65 S. E. 387, 23 L. R. A. (N. S.) 1188.

The terms of the ordinance are peculiar. Adopting the classification of vehicles for hire, in common parlance they are known as "taxis" and "jitneys." A "taxi" is a vehicle, usually of the motor class, the charges for which are a stipulated fare or upon a time or distance basis, not at all in competition with street cars; a "jitney," also of the motor class, the charges for which are much lower, a stipulated fare, usually five or ten cents, directly in competition with street cars. This nomenclature will be herein adopted.

The ordinance applies to both taxis and jitneys alike. Under its provisions such a vehicle cannot enter Main street, between the designated points, at all, unless (1) it is at the time conveying a passenger who is to be discharged at some point on Main street; or (2) it has received a call from an intended passenger on Main street. If it is conveying a passenger to be discharged on Main street, it cannot enter Main street except at the corner nearest the point of discharge and must thereafter leave Main street at the nearest corner; if it has received a call from an intended passenger on Main street, it cannot enter Main street except at the corner nearest the point of call, and after taking up the passenger leave Main street at the nearest corner.

The inevitable and evidently intended effect of the ordinance is to keep taxis and jitneys off of Main street, to deprive them of the right of the use of a public thoroughfare except under the conditions stated and under restricted limitations even then.

A driver has no right under the ordinance to the use of Main street within the prohibited zone even if he should be carrying a passenger, unless the point of discharge be on Main street within that zone. The Jefferson Hotel, for instance, is on Main street, but without the prohibited zone; he would not be allowed to carry a passenger from the Union Depot, up Main street, to the hotel. If a passenger wished to be carried from a point on the east of Main street to a point on the west side, the driver could not enter Main street even for the purpose of crossing it, except beyond the zone. If upon a previous call a passenger should be taken up on Main street to be carried to the state house, the driver would not be allowed to use Main street, but must leave it at the first corner and detour one or more blocks, even if he could be allowed to re-enter Main street at the Monument. The declared purpose of the

ordinance is found only in its title: "An ordinance further regulating traffic of the city of Columbia."

Counsel for the respondent has specifically pointed out no evil condition produced by the operation of the jitney in the prohibited zone. It may be assumed from the quotations from cases cited by him that the evil consists in danger to pedestrians, in congestion of traffic, in collisions with other vehicles. As a matter of fact, the uninhibited use of the street is fraught with less danger that the permitted use. The driver is not allowed to move slowly along the street sweeping the sidewalks with his eyes for a prospective "fare," his speed reduced and his alertness quickened, but is allowed, with a passenger in haste to discharge him and seek other customers, to race him to destination.

If the operation of jitneys within the prohibited zone is fraught with danger of collisions, it must be due to the presence of other vehicles, street cars and private cars, permitted to use the streets without restrictions. A private car is permitted the use of the street, not only for locomotion, but to be parked with its nose to the curb and its posterior obstructing the line of transportation and the view of persons crossing the street. It is not fair to hold one of the parties producing the peril and freely license the other.

We conclude, therefore, that the ordinance in question is an unreasonable and discriminiating interference with the constitutional and contractual right of the defendant, and is void.

The judgment of the court is that the convictions of the defendant be set aside, and that he be discharged without delay.

GARY, C. J., and WATTS and FRASER, JJ., concur.

MARION, J. I dissent. With the utmost deference, the conclusion reached is, in my judgment, demonstrably unsound; but, as argumentative elaboration of my views would subserve no useful purpose, I shall content myself with this brief observation. Conceding that the validity of a police regulation is ultimately a judicial question, the premises upon which this decision proceeds are arbitrarily assumed, as I think, in violation of the fundamental and salutary rule that every presumption shall be indulged in favor of the good faith and ordinary common sense of a legislative body; and the conclusion involves, as I apprehend, a radical and dangerous departure from the settled law of this jurisdiction, that where the subject of the regulation is within the legislative jurisdiction and the measure enacted bears any substantial relation to the public safety and convenience or to the general welfare, the reasonableness of a police regulation is entirely a matter for the legislative department of government, and not for the courts. To foresee the consequences of a departure from that position requires no gift of prophecy.

NOTE—*Excluding Vehicles for Hire From Certain Streets.*—It will be noticed that the provisions of the ordinance involved in the reported case are unusual not to say finnicky. However, an ordinance excluding jitneys from certain zones has been upheld; the use by them of the streets not being a vested right, but the exercise of a mere license. Gill v. Dallas, Tex. Civ. App., 209 S. W. 209.

An ordinance imposing a prohibitive tax for operating jitneys on certain designated streets was held valid. This provision of the ordinance was intended to benefit the street railway company operating in the city. Dresser v. Wichita, 96 Kan. 820, 153 Pac. 1194.

Under its general welfare powers a city adopted an ordinance containing the following: "It shall be unlawful for any jitney bus operator or owner to take on or discharge passengers upon or along, or within seven hundred feet of any street, avenue or highway in the city of Miami, which is now or may hereafter be traversed by street car tracks over which street car service is mantained. Provided, however, that passengers taken on at points more than seven hundred feet distance from street car tracks may be discharged at any point and provided further that passengers boarding any jitney bus within less than seven hundred feet of any street car tracks shall not be discharged at any point nearer than seven hundred feet of any street car tracks." Held, that the quoted provision of the ordinance forbids the use of jitneys by the public in certain streets or sections of the city without any basis therefor in matters affecting public safety, health, morals or welfare; and that it is therefore arbitrary and unreasonable and consequently invalid. Curry v. Osborne, 76 Fla. 39; 79 So. 293; 6 A. L. R. 108.

ITEMS OF PROFESSIONAL INTEREST

Mr. Wheeler's comment on my recent article curiously misses the point entirely. As a solution of the criticism directed against 5 to 4 decisions I suggested an increase in the number of judges to ten. In view of the fact that the court is considerably behind its docket such an increase would seem in itself desirable.

If at the same time such an increase would require a majority of two rather than a majority of one to upset Acts of Congress that certainly would not conflict with either constitution precedent or logic.

Mr. Wheeler's argument is based on a misunderstanding of the meaning of the word "majority", not to say of mathematics.

"Majority" means "more than half of a given number or group, the greater part" and "the amount or number by which one group of things exceeds another group, the excess, as 'a small majority.' "—New Standard Dictionary.

When he therefore says: "The radical fallacy of Mr. Tittman's proposition is this: If it were required that more than a majority of the Courts should concur in a decision this would really put the decision in the hands of a minority;" he uses somewhat loose language, a fault that is to be deprecated in the discussion of matters of law as well as of mathematics.

But when he goes on to state that "Three dissenting judges would really decide the case", he convicts himself of having read my suggestions too carelessly to entitle him to comment on the same. Under my proposition it would take five judges to believe in the constitutionality of an act to prevent it from being declared unconstitutional and six judges out of the ten to declare it unconstitutional. But even if that portion of Mr. Wheeler's comment applied to my argument, which it does not, I see no great force in his statement, because, in view of the course every Act of Congress has to run before it becomes a law, and the fact that the presumptions are in favor of its constitutionality, there is just as much, if not more reason in saying that three judges shall be enough to sustain the constitutionality as in the dictum that one shall be enough to set it aside.

EDWARD D. TITTMANN.

CORRESPONDENCE

December 10, 1923.

To the Editor of the Central Law Journal:

On account of the passage of time since the adoption by the Conference of Commissioners on Uniform State Laws, of the Negotiable Instruments Law, both the Bar and Courts seem to have lost sight of the origin and purpose of that law.

At the Annual Conference of Commissioners on Uniform State Laws, held in Detroit, Mich., in 1895, a resolution was passed requesting the Committee on Commercial Law to prepare, as soon as practicable, a draft of a bill relating to Commercial Paper, based upon the "English Bills of Exchange Act." The draft of the bill was submitted to Conference at Saratoga in 1896 and after consideration section by section, was approved by the Conference, and in that form, was submitted to Congress and the various State Legislatures.

The Negotiable Instrument Law, as recommended by the Conference of Commissioners on Uniform State Laws, and as adopted by the United States and all the individual States except Georgia and Texas, is intended to be as near as possible identical with the "English Bills of Exchange Act of 1862."

The purpose of the Conference of Commissioners was to make the law of Negotiable Instruments in the United States and its possessions uniform with the law upon the same subject throughout the British Empire. It was this purpose which led to the adoption of the Conference's recommendation by the Congress of the United States and the Legislatures of the respective States.

Clearly, therefore, it is the duty of both Courts and lawyers when in doubt as to the correct construction of any part of that law, to go back to the decisions of the highest appellate tribunals in England and be guided by their decisions first of all. In this way only can uniformity be maintained in this country with the decisions in England.

Those desiring to verify the foregoing are respectfully referred to the following publications:

1st. "Bills of Exchange Act, 1882", 45 and 46 Vict. Ch. 61, A. D. 1882.

2nd. 2 Law Quarterly Review, 1886, Sir Frederick Pollock Editor. Article by Judge Chalmers, p. 125, entitled "An Experiment in Codification."

3rd. Transactions of the Alabama State Bar Association, 1886. Report of the Committee on Correspondence.

4th. Transactions of the Alabama State Bar Association 1904, p. 158. Report of the Committee on Correspondence.

5th. Report of the Commissioners for Louisiana for the Promotion of Uniform Legislation, etc., for 1906, pp. 1 to 13.

6th. Address of Amasa M. Eaton, President of the Conference of Commissioners on Uniformity of Legislation, delivered before the State Bar Association of Missouri, at St. Louis, September 23, 1905, pp. 4 and 5.

7th. Ninth Annual Report of the Board of Commissioners of Uniformity of Legislation for the State of Rhode Island, January Session, 1905.

8th. The American Legal News, October, 1907, p. 675, address by W. O. Hart of the New Orleans Bar before the Mississippi Bar Association at Vicksburg, Miss., May 9th, 1907.

9th. 23 Case and Comment, January, 1917, the Movement for Uniform State Laws, by W. O. Hart of the New Orleans Bar, p. 648.

10th. American Uniform Commercial Acts, prepared under the direction of and recommended by The Commissioners on Uniform State Laws in National Conference, January 1, 1910, published by The W. H. Anderson Co., Cincinnati, for the Conference, pp. 133-134.

FREDERICK G. BROMBERG.

BOOK REVIEWS

BLAKEMORE ON PROHIBITION

This book does not deal with the well known writ, but treats the law under the Eighteenth Amendment and the Volstead Act. The author is Mr. Arthur W. Blakemore, of the Boston, Massachusetts, Bar, Editor of Schouler on Wills, Adiministrators and Executors, Sixth Edition, and Schouler on Marriage, Divorce(Separation and Domestic Relations, Sixth Edition It is published by Matthew Bender & Company, Albany, New York.

As far as we know, this is the first attempt to make an exhaustive and complete treatise on the important and growing subject of Prohibition. Among the subjects treated are: Definition of Intoxicating Liquor; Liquor Nuisance; Possession, Manufacture and Transportation of Liquor; Effect of the Volstead Act on Federal Revenue Taxes; The Liability to be Punished for the Same Offense both under the State Law and under the Federal Law; Search and Seizure Clauses of the United States Constitution; The Right to Search an Automobile, Suitcase, or the Person; The Necessity and use of a Search Warrant and the steps necessary to obtain one, as well as the rights of the officer to search, seize and arrest without a warrant; Smuggling Liquor from Ships beyond the three-mile limit; The Rights of Foreign Ships to carry Liquor into this country; Civil Liability for furnishing liquor contrary to law, and the effect of illegality in Civil Suits concerning Liquor Transactions; The Rights of Officers to induce and entrap individuals into violation of the law are fully discussed; Physicians' Prescriptions; The Rights of the Individual under the law are pointed out in a separate section, showing what rights he has in liquor for his personal use, in his dwelling and elsewhere; and Federal Legislation's Effect on State Prohibition Law.

The author has compiled approved forms to cover the different situations, from indictments and informations under the statute and pleadings in Conspiracy Cases to the requisite pleadings for search warrants and forfeitures and petitions for the protection of the rights of innocent owners in such cases.

It is a very valuable treatise coming at an opportune time, and prosecuting officers, lawyers, defendants, and owners will find it a necessity for the protection of their rights.

The book contains over eight hundred pages and is bound in serviceable buckram.

LOSSES OF LIFE CAUSED BY WAR

The Carnegie Endowment for International Peace has issued a volume under the title stated above. The book is published by the Oxford University Press, American Branch, New York. The work consists of two monographs, one by Samuel Dumas and the other by K. O. Vedel-Petersen. It is edited by Harald Westergaard, Professor of Political Science in the University of Copenhagen.

It is stated by Mr. John Bates Clark, Director of the Division of Economics and History of the Carnegie Endowment for International Peace that, at a conference held by members of the Committee of Research of the Carnegie Endowment in Paris in September, 1919,, it was decided that a series of short monographs should be published in advance of the larger works which have been planned. Of the two monographs contained in the present volume, one, that by Mr. Vedel-Petersen, on the Losses of Life caused by the World War, constitutes a part of the proposed series, while the other that by Mr. Dumas, is incorporated with it in a single bound volume, because it brings the account of losses of life caused by warfare down to the date when the world war began. The two monographs, as here combined, furnish an available compend of information on this highly important subject.

CORPUS JURIS, VOLUME 31

Volume 31 of Corpus Juris has been delivered. This volume covers subjects Husband and Wife to In Judicio Non, and contains 1200 pages. It is up to the usual high standard in every respect of the publishers, The American Law Book Company.

Attention is called to the special service rendered by the publishers as set out on the blue sheet attached to the first flyleaf of the book. The subscriber is informed that, by applying by letter or wire to the Annual Annotations Bureau, 272 Flatbush Extension, Brooklyn, N. Y., giving volume, page, and note number of Corpus Juris or Cyc, he will receive:

(1) All citations of cases subsequent to the last volume of Annual Annotations free, by mail or wire according to request.

(2) Photographic copies of decisions by mail at prices therein quoted.

The publishers state that this is the only service in existence which gives you access at once, and without cost, to all cases subsequent to the Annual Annotations or Corpus Juris, and without loss of time or labor.

DIGEST.

Digest of Important Opinions of the State Courts of Last Resort and of the Federal Courts.

Copy of Opinion in any case referred to in this Digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

1. **Attorney and Client**—Court's Power.—The power of the court to act summarily in proceedings by a client for the return of papers held by his attorney cannot be doubted.—In re Buschman, N. Y., 200 N. Y. S., 874.

2. **Banks and Banking**—Bank Stock.—In an action by an administrator with the will annexed against a sucessor of a bank which had issued stock to deceased executor, to require it to transfer the stock on its books, held that a certificate issued in 1823, which provided that "this is to certify that 67 shares in the capital stock of the Mechanics' Bank in the city of New York are this day standing in the name of Archibald C..... * * * on the books of the company," was not considered at the time of its issue as anything more than a receipt which was not required to be surrendered when the stock was transferred on the bank's books.—Seymour v. Mechanics & Metals Nat. Bank, N. Y., 200 N. Y. S. 758.

3.——Cashier.—Though cashier of bank was advising depositor as to her financial affairs, where he had no authority to check out her money, his act in withdrawing money deposited to her credit was the act of the bank for which it was liable.—Darien Bank v. Clifton, Ga., 118 S. E. 641.

4.——Checks.—Where the drawer of a check on one bank in favor of another delivered the check to his agent, with instructions to deposit it to the credit of drawer's account in the payee bank, but the agent cashed the check and converted the proceeds, the possession of such check did not clothe the holder or bearer with apparent authority to convert it into cash, and, in the absence of express or implied authority from the drawer, the bank is liable to the drawer for the money so paid. —Graham v. Southington Bank & Trust Co., Conn., 121 Atl. 812.

5.——Collections.—Where trust company sent a draft with bill of lading attached to bank for collection, the latter bank's agency was limited to collecting and remitting the amount of the draft or returning the draft with bill of lading if unable to collect, and it had no authority to accept in payment of the draft checks drawn on the collecting bank by the drawees payable to the drawer and certified by the collecting bank; and when such checks were attached as the property of the drawer, either the checks must be regarded as cash which the collecting bank failed to remit or the acceptance of them as checks in payment for the draft must be regarded as a violation of the collecting bank's duty, so that in either event it was liable for the amount of the draft.—Jersey Shore Trust Co. v. Owosso Sav. Bank, Mich., 194 N. W. 5.

6.——Guaranty Act.—A deposit bearing interest in excess of a rate uniform within the county, which has been approved by the bank commissioner, is not within the protection of the bank depositors' guaranty fund.—Koelling v. Peterson, Kan., 216 Pac. 1099.

7.——Guaranty Act.—Where a bank because of unlawful hypothecation of bonds in its possession by its cashier has become liable for the conversion of such bonds to the owner, it cannot, by issuing a deposit slip to its creditor and crediting him with the amount of the debt, entitle him to reimbursement as a protected depositor from the state guaranty fund upon subsequent insolvency of the bank. —Hall v. Conaway, Texas, 252, S. W. 1105.

8.——Officials.—Where the president of a bank agreed with the maker of a note, indorsed to the bank for the benefit of a corporation of which both the president of the bank and the maker of the note were officers, that the maker should not be required to pay the note though the maker did not receive value for the note, such agreement was no defense to the maker's liability thereon; the general rule of agency that no person can act as agent in a transaction in which he has an interest, or to which he is a party opposed in interest to his principal, being applicable to a bank officer.—Geneva Nat. Bank v. O'Brien, N. Y., 200 N. Y. S. 785.

9.——Receiver.—The fund collected by a receiver of an insolvent bank from the stockholders under their statutory liability is a reserve or trust fund for the benefit of all the creditors of the insolvent bank.—Farmers' State Bank v. Reed, Kan., 217 Pac. 320.

10.——Special Deposit.—On insolvency of a bank, a special deposit is entitled to preference in payment, whether or not the money deposited is mingled with the funds of the bank.—Marshall v. Farmers' & Merchants' Bank, Mo., 253 S. W. 15.

11.——Sureties.—Under Laws 1919, p. 135, creating office of superintendent of banks, and defining his powers and duties, the superintendent, after taking possession of bank, is not required to be present at all times at its office either in person or by agent to receive tender of payment by sureties, and surety is not discharged by superintendent's failure to have some one at the bank to accept tender.—Bennett v. Simmons, Ga., 118 S. E. 493.

12.——Transmitting Money.—A customer, who paid to a bank $419 to be transmitted to Germany by the customary method, which at that time was by letter of advice to a correspondent bank in Germany to pay the equivalent in German marks to the designated individual and debit the American bank, can recover from the latter bank, after the loss of the letter of advice, so that the payment was never made by the German bank, only the present value of the number of marks stated in the letter of advice.—Kurtzeborn v. Liberty Bank, Mo., 253 S. W. 103.

13.——Trust Funds.—Before a trust can be declared against assets in the hands of a receiver of a bank, it must be shown that the assets received by him were increased by the funds sought to be declared trust funds; it is not enough to show that the assets of the bank were increased, or that the money received by the bank was used in reducing its indebtedness. Investment Co. v. Bank, 98 Kan. 412, 158 Pac. 68, L. R. A. 1916F, 822, followed.—Honer v. Hanover State Bank, Kan., 216 Pac. 822.

14. **Bankruptcy**—Composition.—An order confirming a composition becomes in effect a discharge from all those debts which have been properly treated in the composition order, except that fraction thereof which bankrupt has agreed to pay. —In re Mirkus, U. S. C. C. A., 289 Fed. 732.

15.——Concealments.—Under Bankruptcy Act, § 14b, subd. (Comp. St. § 9598), transfer of realty to bankrupt's wife for nominal consideration before the four months preceding petition for adjudication was not a "fraudulent concealment," barring discharge, although the deed was recorded within the four months' period, in view of sections 3, 60 (Comp. St. § 9587, 9643).—In re Plank, U. S. D. C., 289 Fed. 900.

16.——Creditor.—Where warehouse receipts for peanuts were already pledged to creditor under Shannon's Code Tenn. §§ 3608a42-3608a55, the creditor's taking of deed of trust covering the nuts did not alter the situation of the parties, and hence was not a preference.—In re K. G. Whitfield & Bro., U. S. D. C., 290 Fed. 596.

17.——Exempt From Arrest.—The court will protect a bankrupt from arrest on civil process from a state court, where it is not affirmatively shown that the debt on which the process issued is one from which his discharge would not be a release.—In re Kneski, U. S. D. C., 290 Fed. 406.

18.——Fraud.—Where three corporations had a joint factoring agreement with defendant, proof that defendant advanced certain sums to one of the corporations, which subsequently became bankrupt, and that corporation at once indorsed the checks for the advances to another one of the corporations, by which they were cashed, whereupon the latter corporation gave defendants its checks for the greater part of that sum, which were applied by defendant to the payment of that corporation's creditors, except a balance which was credited to the latter corporation's account with defendant, and was wiped out by other debts, does not show any fraud on the part of the bankrupt corporation or defendant, even if the bankrupt was insolvent at the time the other corporation repaid the money to defendant, and does not show any transfer to defendant from the bankrupt which could be a preference.—Gotshal v. Mill Factors Corporation, U. S. C. C. A., 289 Fed. 1008.

19.——Jurisdiction.—In proceedings for an order of resale, and to adjudge bidders at prior sale liable for resulting deficit, an appearance, by a bidder at the prior sale, on whom personal service was not had, in which he averred that he appeared involuntarily in obedience to an order to show cause, and that the order to show cause was not served on him, that he had no knowledge thereof, and that he was not a party to the adjudication resulting in the issuance of such order, held a sufficient objection to the jurisdiction.—In re Rival Knitting Co., U. S. C. C. A., 289 Fed. 960.

20.——Liens.—Though an incipient or executory lien for rent is given by Ky. St. § 2317, from the time the tenant takes possession, where there was no default until within four months prior to the tenant's bankruptcy, and a distress warrant was issued by a justice of the peace as of course under the statute, and levied before the bankruptcy, the bankruptcy court may properly by summary proceeding take possession of the property seized and administer it, recognizing, however, the landlord's lien.—Louisville Realty Co. v. Johnson, U. S. C. C. A., 290 Fed. 176.

21.——Restrain State Court.—Where the bankruptcy court obtained jurisdiction of the bankrupt's property, it had jurisdiction to restrain the prosecution in the state courts of a suit by one claiming property or the proceeds of property of the bankrupt, which had not been reduced to possession, and which were not in the possession of the court in which proceedings had been brought.—In re Hoey, U. S. C. C. A., 290 Fed. 116.

22.——Taxes.—Under Bankruptcy Act 1898, § 64b (Comp. St. § 9648), allowing priority to debts owing any person who by the laws of the state or the United States is entitled to priority, which differs from the provision of earlier acts requiring payment of debts due the United States in preference to all claims, except the costs of bankruptcy proceedings, and which act of 1898 expressly excepted from discharge taxes due the United States, without mentioning other debts due the United States, the United States is required to present its claim against a bankrupt to the trustee in bankruptcy, and therefore a court of equity is without jurisdiction of an independent suit by the United States to compel the trustee to pay its claim, under Rev. St. § 3466 (Comp. St. § 6372), in preference to all other claims.—United States v. Wood, U. S. C. C. A., 290 Fed. 109.

23.——Trustee.—Under General Corporation Law Del. § 14, right of action to enforce stockholders' liability held to vest in trustee of bankrupt corporation.—In re Pipe Line Oil Co., U. S. C. C. A., 289 Fed. 698.

24.——Trustee.—Under Rev. Code S. D. 1919, § 8779, giving any creditor of a corporation the right to sue stockholders for the amount unpaid on their stock, and imposing the liability on the holder of the stock when such action is commenced, and section 8775, providing that, when stock is issued for property, the judgment of the directors, exercised in good faith, shall be conclusive as to the value of the property, the trustee in bankruptcy of a corporation is not vested with a right of action against holders of stock which was issued as full paid in exchange for property; their liability, if any, not being an asset of the corporation, but a right personal to creditors.—In re Associated Oil Co., U. S. C. C. A., 289 Fed. 693.

25. **Bills and Notes**—Consideration.—A note secured by deed of trust, payable to the real owner of the land and without consideration at the time it was executed, and so not a binding obligation, became a valid and binding obligation of the purchaser of the land who assumed payment of such note and requested and obtained from the payee an extension of time for payment; the extension being ample consideration for the note as between the purchaser and payee.—Russell v. Wyant, Mo., 253 S. W. 790.

26.——Negotiability.—A certificate of deposit issued by a bank and payable to the order of the depositor named therein is a "negotiable instrument."—Corinth Bank & Trust Co. v. Security Nat. Bank, Tenn., 252 S. W. 1001.

27. **Carriers**—Rates.—Const. Ga. art. 4, § 2, par. 1, and laws enacted pursuant thereto, conferring on the state Public Service Commission power to make reasonable and just freight rates, including reasonable and just joint rates for all connecting railroads, as to all traffic passing from one of said roads to the other, do not authorize the commission to prescribe a single continuous rate as to joint intrastate freight traffic moving over two connecting lines, owned and operated separately by different companies, because one company owns a controlling interest in the stock of the other.—Georgia S. & F. Ry. Co v. Georgia Public Service Com'n, U. S. D. C., 289 Fed. 878.

28. **Commerce** — Interstate.—A railroad company's section hand, engaged in repairing tracks used in interstate commerce, held engaged in interstate commerce while riding home on the company's motor car with the men after they had quit work for the day, so that his cause of action for injuries was governed by the federal Employer's Liability Act of 1908 (U. S. Comp. §§ 8657-8665).—Southern Ry. Co. v. Jaynes, Ind., 140 N. E.

29.——Peddler's Tax.—While a tax on peddlers who sell and forthwith deliver goods is within the police power of the state, a tax on one who travels and solicits orders for goods to be shipped from without one state is a burden on interstate commerce and unconstitutional.—Wilk v. City of Bartow, Fla., 97 So. 307.

30.——Telegraph Service Interstate.—The improved telegraph service at Oberlin, ordered to be instituted by the Commission, was altogether of an interstate character; the order was primarily, not secondarily or incidentally, intended to accomplish that purpose, and was therefore an effort to regulate interstate commerce in a field withdrawn from state control, following decisions of the United States Supreme Court cited in the opinion.—Chicago, B. & Q. R. Co. v. Reed, Kan., 217 Pac. 322.

31. **Constitutional Law**—Appointing Guardian.—The provision of section 10989, General Code, making physical disability or infirmity a ground for the appointment of a guardian of the property of a person mentally competent, but physically incompetent, is an unwarranted abridgment of the liberty of such person, and an unwarranted abridgement of his right to acquire, possess, and protect property, and is in violation, in that respect, of section 1, article 1, of the Constitution of Ohio.—Schafer v. Haller, Ohio, 140 N. E. 517.

32. **Corporations**—Liability of Stockholders.—Directors or stockholders who have failed to discharge their duty to the corporation, as by their failure to make the corporation pay its debts, are not held to pay its debts and are not liable for its nonfeasance.—Rudisill Soil Pipe Co. v. Eastham Soil Pipe & Foundry Co., Ala., 97 So. 219.

33.——Officials.—The managing officer of a corporation could not legally agree that an attorney might offset his note to the corporation with the value of legal services rendered by the attorney to the officer's father-in-law.—Barto Co. v. Aylmore, Wash., 216 Pac. 857.

34.——Quorum.—Gen. St. 1887, § 1928, declaring that "a majority of directors of every corporation, convened according to the by-laws shall constitute a quorum for the transaction of business," was merely directory, and did not prevent the incorporators from agreeing that less than a majority should constitute a quorum.—Lehmaier v. Bedford, Conn., 121 Atl. 810.

35.——Stock Certificates.—A certificate of stock is evidence of the holder's interest in the property of the corporation, but its terms are not conclusive of the rights of common and preferred stockholders, inter sese, which are determined by the charter, articles of incorporation or other fundamental agreement between all stockholders.—Continental Ins. Co. v. Minneapolis, St. P. & S. S. M. Ry. Co., U. S. C. C. A., 290 Fed. 87.

36. **Covenants**—Restrictions.—A covenant in a deed restricting buildings to be erected on the premises to "private dwellings" prohibits the use of a dwelling owned by an association for improving the poor as a vacation home for different groups of children for recreation periods of a week or 10 days, with an intermediary arrangement to have members of a 'Housewives' Club" brought to the home for recreational benefit, the enterprise being essentially an institutional activity, comparable to an orphan asylum, and was not the use of the dwelling as a "private dwelling," and the fact that no signs were placed on the premises did not alter its essential character.—Neidlinger v. New York Ass'n, Etc., N. Y., 200 N. Y. S. 852.

37. **Explosives**—Static Spark.—In an action for damages against the owner of a gasoline filling station for fire alleged to have been caused by the generation of static electricity by reason of the defendant's failure to use a safety chain or device to ground any flow of static current, it was not necessary that plaintiff show that a static spark was actually produced, but it was sufficient to show conditions and circumstances from which the inference could be reasonably drawn that a static spark was produced.—Standard Oil Co. of New York v. R. L. Pitcher Co., U. S. C. C. A., 289 Fed. 678.

38. **Insurance**—Accident.—If an accident policy contains no provision excepting such hazards, and by chance, without the design, consent, or cooperation of the insured, he is injured or killed as a result of a hazard incident to his occupation, his injury or death properly may be said to have been caused by accidental means.—Great Southern Life Ins. Co. v. Churchwell, Okla., 216 Pac. 676.

39.——Appraisers.—Every presumption of validity attends the award of appraisers of a fire insurance loss under the Minnesota standard policy, and one attacking it for fraud must state his grounds by way of direct and specific allegations and not by way of conclusions.—Di re v. Fire Ass'n of Philadelphia, Pa., Minn., 194 N. W. 755.

40.——Claims.—Under automobile accident indemnity policy, requiring insurer to defend actions unless it elected to settle, and providing that insurer would not be responsible for any settlement made by the insured unless authorized in writing, insurer was not required to agree to settlement offered by injured party, and on its refusal to agree, and the rendition of a judgment greatly in excess of the amount offered in settlement, was not liable for an amount in excess of the face of the policy, though the insurer realized prior to the trial that the terms under which the settlement could be had were favorable and ought to be accepted.—Auerbach v. Maryland Casualty Co., N. Y., 140 N. E. 577.

41.——Collision.—In a policy insuring an automobile against collision with an object, the word "collision" refers to the automobile striking some object in or along the road, and does not include the striking of the road with the body of the automobile when the front axle broke.—New Jersey Ins. Co. v. Young, U. S. C. C. A., 290 Fed. 155.

42.——Intention.—Within a clause in an accident insurance policy excepting a liability for injuries caused by the intentional act of another, an "act" does not consist alone of the power exerted, but includes the immediate effect of such power, so that the act of shooting insured consisted, not only of the power which propelled the bullet from the weapon, but also of the striking of plaintiff with the bullet, and the act was not intentional, even if the weapon was intentionally fired, if it was intended thereby to shoot another.—Cooper v. National Life Ins. Co., Mo., 253 S. W. 465.

43.——Mortgage Requirement.—Where a mortgage required mortgagor to take out insurance for mortgagee's benefit, but by mistake the insurance was taken out in the name of mortgagor's husband, and after a loss he promised to pay over to mortgagee's assignee the proceeds of the policy when insurer paid him, held that mortgagee's assignee can recover from mortgagor's husband the amount he received from insurer, though the attorney of mortgagee's assignee did not notify insurer of the mistake.—O'Cain v. Langston, S. C., 118 S. E. 534.

44.——Policy.—Where a fire insurance policy covered only one page, stipulations printed upon the back thereof, but not referred to in the policy and not signed by any one, are not binding upon the parties.—National Ben Franklin Fire Ins. Co. v. Brown, Texas, 253 S. W. 632.

45.——Term Policy.—A life insurance policy, wherein insurer promised to pay the beneficiary $1,000 upon receipt of evidence satisfactory to the company of the fact of death, occurring during the continuance of the contract, but not providing that it should terminate at the end of 30 years, or that it should be payable only in the event the insured died within 30 years from the date, held a 30-payment life policy, and not a 30-year term policy.—Howell v. Security Mut. Life Ins. Co., Mo., 253 S. W. 411.

46.——Transportation.—Damage to an automobile caused by the automobile running off a ferryboat moored to the shore while the automobile was being driven onto the boat to be ferried across a river, held a loss while being transported within a policy covering a loss to the automobile while being transported in any conveyance by land or water.—Wheeler v. Globe & Rutgers Fire Ins Co., S. C., 118 S. E. 609.

47.——Waiver.—Proof that local financiers of a benefit association permitted members insured to pay their dues and assessments the month following that in which they became due, though the by-laws provided that beneficiary members would be suspended for non-payment, held sufficient to establish a course of dealing which constituted a waiver of the failure to pay during the month when due, so that where one insured at the time of paying a delinquent assessment the month after it was due, was seriously ill, and shortly thereafter died, her beneficiaries were nevertheless entitled to recover.—Glenn v. Security Ben. Ass'n, Mo., 253 S. W. 802.

48.——Waiver of Conditions.—Adjustment of loss by the adjuster of the insurer and agreement by him that the company would pay the face of the policy constitute waiver of all breaches of conditions of the policy of which the insurer then had knowledge.—Springfield Fire & Marine Ins. Co. v. Fine, Okla., 216 Pac. 898.

49.——Warranty.—Where a fire policy was taken out on an automobile as being a 1918 model when, in fact, it was a 1916 model, no recovery on the policy could be had, regardless of insured's good faith in representing the model; he having signed a warranty that the car was a 1918 model, which carried a different rate of insurance than a 1916 model.—Bushong v. Security Ins. Co., Mo., 253 S. W. 175.

50. **Joint-Stock Companies and Business Trusts**—Liability for Debts.—Members of unincorporated association, not constituting a limited partnership, but organized under declaration of trust placing the management of the business in the hands of trustees held jointly and severally liable for debts incurred by trustees in the conduct of such business under Vernon's Sayles' Ann. Civ. St. 1914, arts. 6149, 6152, 6153, though under such declaration of trust they had no direct control or authority over the trustees or their management of the business.—Nini v. Cravens & Cage Co., Texas, 253 S. W. 582.

51. **Landlord and Tenant**—Latches.—Where a lease for a period of 10 years from July 1, 1916, contained a provision giving lessee the right to terminate it on 90 days' notice in the event of the passage of any law interfering with the traffic in liquors, and the federal Prohibition Act went into effect in November, 1919, held that a notice of intent to terminate the lease, served on December 28, 1922, was too late to be effective.—Shear v. Healy, N. Y., 200 N. Y. S. 770.

52. **Master and Servant**—After Working Hours.—Where an employee of a Refrigerator Transit Company under control of the United States Railroad Administration, after the day's work had ended, started home on foot, and when on the street, about a block from the plant, mounted a truck belonging to the company and rode part of the way home, but was injured while alighting through the alleged sudden starting of the truck, held that the act of the chauffeur was within the scope of his employment and in the furtherance of the employer's business, making it liable for the injury.—Galba v. Payne, Mo., 253 S. W. 137.

53.——Master's Negligence.—A silk manufacturing company conducted its business in a wooden building, amid highly inflammable surroundings; it had in its employ a young man known to be a smoker of cigarettes, knew of the dangers of fire from that source, and repeatedly warned him against smoking upon its premises; the company permitted him after his hours of service were ended to sleep of nights in the premises, notwithstanding the fact that it had full knowledge that he was continuing his habit of smoking and was disobedient to instructions, but took no further steps to prevent it; a fire was caused by the employee negligently throwing a lighted cigarette stub into a waste basket on defendant's premises, and it spread to and destroyed his neighbor's property. The silk manufacturing company is liable to its neighbor for its loss, though the employee was not actually performing service for it at the time of his negligent act and in furtherance of its business.—Keyser Canning Co. v. Klots Throwing Co., W. Va., 118 S. E. 521.

54. **Municipal Corporations**—Sidewalks.—Owners and occupants of property are not liable to a pedestrian for injuries resulting from a fall caused by slipping on snow and ice which, due to natural weather conditions, accumulated on the sidewalk in front of the property, notwithstanding an ordinance penalizing failure to remove such snow and ice.—Sewall v. Fox, N. J., 121 Atl. 669.

55.——Street Crossing.—The violation of the city ordinance which requires that the driver of a motor vehicle in approaching a street crossing shall sound a warning signal of its approach is negligence per se, and it was not error for the court so to instruct the jury, and to authorize a verdict for plaintiff for such negligence if the jury found it was a proximate cause of the injury.—Steigleder v. Lonsdale, Mo., 253 S. W. 487.

56.——Street Crossings.—A driver who has not the right of way may assume that an automobile approaching a street intersection, and having the right of way will not approach it at a negligent rate of speed.—Grant v. Marshall, Dela., 121 Atl. 664.

57.——Use of Streets.—A municipal ordinance denying to a motor bus company for hire the right to use a municipal street for the purpose of a motor bus stop or station to let off or take on passengers is within the constitutional grant of municipal power, and therefore is a valid ordinance.—Village of Perrysburg v. Ridgway, Ohio, 140 N. E. 595.

58. **Negligence**—Driving.—A wife, who was riding in her own automobile while it was being driven by her husband, is not chargeable with her husband's negligence in driving the automobile.—Southern Ry. Co. v. Priester, U. S. C. C. A., 289 Fed. 945.

59. **Sales**—Profits.—Where goods are sold by description for the purpose of resale, and do not answer the description, the vendee may recover, inter alia, the anticipated profits on a contract for resale entered into on the faith of receiving what he had bargained for from the vendor, when those profits may reasonably be supposed to have been in contemplation of both parties at the time they made the contract, as the probable result of its breach.—Holland v. Jones-Howe Co., N. J., 121 Atl. 725.

60.——Warranty.—Where an article is not worthless for the purpose for which it was bought, but is simply inferior in quality to that warranted, retention will not generally estop buyer from urging partial breach of warranty, or partial failure of consideration, and he may offset his damages against the contract price.—Dunlap Hardware Co. v. E. F. Elmberg Co., Texas, 252 S. W. 1098.

61. **Telegraphs and Telephones**—Rates.—A telephone company's rule establishing a base rate zone including the continuously built up central section of each exchange, and requiring single but not party line subscribers outside such zone to pay a mileage charge from the base rate zone line, held not unreasonable.—Gallaher v. Southern New England Telephone Co., Conn., 121 Atl. 686.

62. **Vendor and Purchaser**—Amount of Damages.—"The refusal of the purchaser to perform [an agreement to buy land] will not give to the owner the right to resell the land at the risk of the former and hold him liable for a deficiency in the price realized, the true measure of damages being the difference between the contract price and the market value of the land at the time of the breach." Cowdery v. Greenlee, 126 Ga. 786 (3), 55 S. E. 918, 8 L. R. A. (N. S.) 137.—Killarney Realty Co. v. Wimpey, Ga., 118 S. E. 581.

63. **Wills**—Title.—Will giving land to named sons, with the direction that the property should not be disposed of until specified son became 21 years of age, "and then only if neither one here mentioned does not wish to carry on any business, should any one of my sons desire to use this property for business he shall be allowed to do so, for which he shall pay amount for rent, which shall be divided equally between them or their legal issues," held to give the sons the property in fee and in common, coupled with the restraint on alienation until the named son became of age, the other portion of the clause relating to the use of the property for business should any of the sons desire, being void for uncertainty.—Simmons v. Simmons, Conn., 121 Atl. 819.

64. **Workmen's Compensation Act**—City Employee.—Section 2 of the Workmen's Compensation Act (chapter 162, Session Laws of 1919), which defines "employment" as including employment by the state and all political subdivisions, and which defines employee" as meaning every person engaged in a hazardous employment under any appointment or contract of hire, is construed, and held to embrace policemen employed by a city.—Fahler v. City of Minot, N. D., 194 N. W. 695.